REMARKS

Reconsideration of the claims in view of the enclosed amendments and remarks is respectfully requested. Upon entry of the above amendments, all pending claims, claims 10, 12, 15, and 21-23, will be amended. New claims 24-26 will be added. Claims 11, 13, and 14 will be cancelled. Claims 1-9 and 16-20 were previously withdrawn. Upon indication of allowable claims, Applicants request rejoinder of the withdrawn claims.

Claim Rejections - 35 USC §§ 102 & 103

Claims 10, 12, 15, and 21-23 are rejected under 35 USC § 102(b) as anticipated by or, in the alternative, obvious under 35 USC § 103(a) as being unpatentable over U.S. Patent 5,185,203 to Itaba. Applicants traverse these rejections.

The pending claims recite an improvement over the subject matter of the Itabe patent. Unlike the presently claimed subject matter, Itabe does not teach or suggest:

- sealing layer compositions composed of *high softening point* resins,
- a softening point range, i.e., 110°C to 180°C,
- sealing layer compositions composed of ethylene-unsaturated ester copolymer wherein the sealing temperature of the sealing layer composition is at least 10°C below the sealing temperature of the ethylene-unsaturated ester copolymer, or
- sealing layer compositions having the recited seal strength at a given temperature.

The Itabe patent generically describes resins at col. 6, lines 41-50, i.e., "cyclopentadiene-series petroleum resins…polyterpene resins, rosin resins, cumarone-indene resins, and phenolic resins." The resin specifically mentioned by the Itabe patent, Escorez 5280, does not have a softening point near the claimed range. Escorez 5280, commonly used in the adhesion industry, has a softening point of about 80 to 90°C. Conventional low temperature compositions, such as those described in the Itabe patent, achieve low temperature sealability at the expense of film strength/seal strength.

In contrast to the Itabe patent, the recited compositions not only provide good low temperature sealing, but also provide seal strength due to the high softening point resin.

In addition, there is no motivation to modify Itabe to achieve Applicants claimed subject matter. In *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), and its progeny, the Federal Courts presuppose that that the technological record up to the time of Applicants' invention would give some reasons to make particular modifications to achieve the claimed invention. An obviousness analysis, and the Office Action's present argument, requires that the record before Applicants' invention supply some reasons for narrowing the prior art universe to a "finite number of identified, predictable solutions…" *See KSR*, 127 S.Ct. at 1742. If such finite solutions were available and were easily traversed, there *may be* an inference of obviousness.

However, this is not the present case and there can be no inference of obviousness as the Office Action suggests. "To the extent an art is unpredictable, as the chemical arts often are, *KSR*'s focus on these 'identified, predictable solutions' may present a difficult hurdle because potential solutions are less likely to be genuinely predictable. *See Eisai Co. Ltd. V. Dr. Reddy's Lab., Ltd.*, ___ F3d ___ (Fed. Cir. July 21, 2008). Within the present unpredictable art, the Itabe is deficient on how/why one might: (a) modify the prior art technology, and/or (b) narrow the universe of alternative tackifiers.

Moreover, applicants recited subject matter exhibit unexpected results as shown, for example, in Applicants' Figure 4, where neat polymer seal strengths, depicted as x's on the graph, are lower than the seal strength achieved with the recited composition, depicted as black squares. Note the general trend is that higher temperature requires higher force to separate film layers, which is a measure of seal strength.

For each of the foregoing reasons, withdrawal of the rejection and allowance of the claims is respectfully requested.

CONCLUSION

Applicants believe that the foregoing is a full and complete response to the Office Action of record. Accordingly, an early and favorable reconsideration of the rejection, and allowance of pending claims 10, 12, 15, and 21-26 are requested.

The Commissioner is hereby authorized to charge counsel's Deposit Account No. 05-1712, for any fees, including extension of time fees and excess claim fees, required to make this response timely and acceptable to the Office.

Respectfully submitted,

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